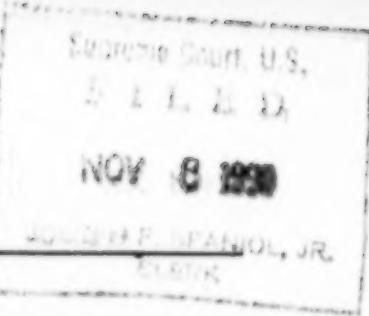


(4)  
No. 89-1690



IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1990

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

CHARLES STEVEN ACEVEDO,

Respondent.

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JOINT APPENDIX

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JOHN K. VAN DE KAMP, Attorney General  
of the State of California  
RICHARD B. IGLEHART, Chief Assistant  
Attorney General  
HARLEY D. MAYFIELD, Assistant  
Attorney General  
ROBERT M. FOSTER, Supervising  
Deputy Attorney General  
110 West A Street, Suite 700  
San Diego, California 92101  
Telephone: (619) 237-7852  
Attorney for Petitioner

FRED ANDERSON, Attorney at Law  
1851 East 1st Street, Suite 1450  
Santa Ana, California 92705  
Telephone: (714) 835-4400  
Attorney for Respondent

---

PETITION FOR CERTIORARI FILED  
April 30, 1990  
CERTIORARI GRANTED October 1, 1990

**JOINT APPENDIX**

**Chronological List of Dates  
on Pleadings Filed; Hearings  
Held, and Orders Entered**

**JA-1**

**RELEVANT MATERIALS FROM  
CLERK'S TRANSCRIPT**

**Information**

**JA-2**

**Points and Authorities**

**JA-4**

**Full Text of Search Warrant**

**JA-9**

**Denial of Motion  
to Suppress Evidence**

**JA-20**

**Entry of Guilty Plea**

**JA-22**

**Sentencing**

**JA-25**

**RELEVANT MATERIALS FROM  
REPORTER'S TRANSCRIPT**

**The Suppression Hearing**

**JA-29**

CHRONOLOGICAL LIST OF DATES ON  
PLEADINGS FILED; VERDICTS AND  
SENTENCE

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA IN AND FOR THE COUNTY  
OF ORANGE

People v. Charles Steven Acevedo  
No. C-68857

DATE	PROCEEDINGS
06/24/88	Information Filed
10/07/88	Motion to Suppress Evidence Denied
10/12/88	Acevedo Pleads Guilty
10/12/88	Acevedo Sentenced; Probation Granted

[Clerk's Transcript p. 2]

Filed in open Superior Court of the State of California, in and for the County of Orange, on motion of the District Attorney of said County, this 24th day of June, 1988.

GARY L. GRANVILLE, COUNTY CLERK

BY: /s/ Juliana M. Boyd Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE	)
STATE OF CALIFORNIA,	)
Plaintiff,	)
vs.	) CASE NO.
	) C-68857
RICHARD BRIAN	)
ST. GEORGE	)
aka: Mark Brent Rich	) INFORMATION
CHARLES STEVEN	)
ACEVEDO	)
<u>Defendant(s)</u>	)

THE DISTRICT ATTORNEY OF ORANGE COUNTY  
hereby accuses the aforesigned defendant(s)  
of violating the law at and within the  
County of Orange as follows:

COUNT I: On or about October 30, 1987,  
RICHARD BRIAN ST. GEORGE and CHARLES

JA-3

STEVEN ACEVEDO, in violation of Section 11359 of the Health and Safety Code, a FELONY, did willfully and unlawfully have in his possession, for purpose of sale, marijuana.

Contrary to the form, force and effect of the Statute in such cases made and provided, and against the peace and dignity of the People of the State of California.

DATED: June 24, 1988

CECIL HICKS, DISTRICT ATTORNEY  
COUNTY OF ORANGE  
STATE OF CALIFORNIA  
BY: /s/  
Deputy District Attorney

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[Clerk's Transcript pp. 64-65]

CECIL HICKS,  
DISTRICT ATTORNEY  
COUNTY OF ORANGE,  
STATE OF CALIFORNIA  
MICHAEL R. CAPIZZI,  
CHIEF ASSISTANT  
DISTRICT ATTORNEY-  
MAURICE L. EVANS,  
ASSISTANT  
DISTRICT ATTORNEY  
THOMAS M. GOETHALS,  
DEPUTY-IN-CHARGE  
WRITS AND APPEALS SECTION

DEPT: 5  
HG DATE: 9/30/88  
EST TIME: 1 HR

BY: MICHAEL JACOBS  
DEPUTY DISTRICT ATTORNEY

P.O. BOX 8089  
SANTA ANA, CALIFORNIA 92702  
TELEPHONE: (714) 834-3600

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ORANGE

THE PEOPLE OF THE )  
STATE OF CALIFORNIA, ) CASE NO. C-68857  
Plaintiff, )  
vs. ) POINTS AND  
CHARLES STEVEN ) AUTHORITIES IN  
ACEVEDO, ) OPPOSITION TO  
Defendant, ) DEFENDANT'S MOTION  
 ) TO SUPPRESS  
 ) (P.C.1538.5)  
 )  
 ) (De Novo Testimony  
 ) Required)

ANTICIPATED STATEMENT OF FACTS

On October 28, 1987 Investigator D. Coleman of the Santa Ana Police Department received a call from DEA agent John McCarthy in Hawaii informing him that a package addressed to J.R. Daza at 805 W. Stevens Avenue, Santa Ana, California 92704, had been seized by the authorities and found to contain contraband. The package was to be sent to the Federal Express Office at 700 W. Alton in Santa Ana. The package contained a picnic cooler containing nine clear bags of marijuana. This package was placed into the mail and shipped to Officer Coleman of the Santa Ana Police Department. On October 29th, Officer Coleman received the package, opened it to examine its contents, then readdressed it to J.R. Daza, 805 W. Stevens Avenue, Santa Ana, California 92704. It was then left at the

Federal Express Office in Santa Ana  
California.

At approximately 10:30 a.m. on October 30, 1987, J.R. Daza picked up the package and was then followed back to his residence at 807 W. Stevens #12, by Santa Ana police officers. He was observed to take the package inside at approximately 11 a.m. Officers Cousin and Andrade took a position of surveillance while Investigator Coleman left to obtain a search warrant. [At 11:45 a.m. surveilling officers saw Mr. Daza exit the residence and dropped the paper and box which had contained the cooler holding the marijuana into a trash bin. At that time Officer Coleman left the scene to obtain a search warrant.]<sup>1/</sup>

Shortly thereafter, at 12:10 p.m., Defendant St. George, was observed by

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1. These words were added by stipulation at the hearing on the motion to suppress. (See RT 2-5, JA 30-33.)

Officers Andrade and Cousin exiting the residence wearing a blue knapsack. The knapsack appeared to be half full. To prevent the possible loss of evidence while waiting for the search warrant, Defendant St. George was then stopped and detained by Officer Morehouse [after he left the complex].<sup>2/</sup> Subsequently, St. George was arrested after the officers found approximately one and a half pounds of marijuana in his knapsack.

At approximately 12:30 p.m., Defendant Acevedo was observed to walk into apartment #12. He was not carrying any packages at that time. He exited 10 minutes later carrying a brown lunch bag that apperaed [sic] to be full. He was then observed to leave the apartment and walk to a silver Honda in the parking lot. He was observed to place the brown lunch

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2. These words were added by stipulation at the hearing on the motion to suppress. (See RT 2-5, JA 30-33.)

bag inside the trunk of the vehicle before he attempted to leave. In order to prevent the possible loss of evidence from the apartment under surveillance, he was stopped by a marked police car.

Investigator Flores opened the [locked]<sup>3/</sup> trunk of the vehicle, opened the brown bag, and found it to contain approximately 1/4 to 1/2 pound of marijuana.

At 12:40 p.m., a search warrant was served on the premises at 807 W. Stevens #12, Santa Ana. The items seized from the residence are itemized in the Return to Search Warrant which is attached hereto, along with the Search Warrant, and Affidavit, as "Exhibit A"

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3. This word was added by stipulation at the hearing on the motion to suppress. (See RT 2-5, JA 38.)

[Clerk's Transcript p. 70-73]

EXHIBIT A

STATE OF CALIFORNIA - COUNTY OF ORANGE  
SEARCH WARRANT AND AFFIDAVIT  
(AFFIDAVIT)

/S/ DON COLEMAN, being sworn, says that  
(Name of Affiant)

on the basis of the information contained  
within this Search Warrant and Affidavit  
and the attached and incorporated  
Statement of Probable Cause, he/she has  
probable cause to believe and does believe  
that the property described below is  
lawfully seizable pursuant to Penal Code  
Section 1524, as indicated below, and is  
now located at the locations set forth  
below. Wherefore, affiant requests that  
this Search Warrant be issued.

/S/ Don Coleman. NIGHT SEARCH REQUESTED:  
(Signature of affiant)

YES [ ] NO[X]

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO  
ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN

THE COUNTY OF ORANGE proof by affidavit  
having been made before me by DON COLEMAN,  
(Name of Affiant)

that there is probable cause to believe  
that the property described herein may be  
found at the locations set forth herein  
and that it is lawfully seizable pursuant  
to Penal Code Section 1524 as indicated  
below by "x"(s) in that it:

- was stolen or embezzled
- X was used as the means of committing a  
felony.
- X is possessed by a person with the  
intent to use it as means of  
committing a public offense or is  
possessed by another to whom he or  
she may have delivered it for the  
purpose of concealing it or  
preventing its discovery
- X tends to show that a felony has been  
committed or that a particular person  
has committed a felony

— tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3 has occurred or is occurring:

YOU ARE THEREFORE COMMANDED TO SEARCH:  
(premises, vehicles, persons)

PREMISES: 807 W. Stevens, Apt. #12, Santa Ana, Orange County, California.

It is a two story apartment building with beige stucco and brown wood trim. The front door faces east with the number "12" attached to the front door. The numbers "807" are attached to the south side of the building.

VEHICLES: Black, Honda Civic, California license #GIH260.

PERSON(S): "John Doe", Male, Mexican, approx. 5'8", 140 lbs, brown hair.  
If found at 807 W. Stevens, Apt. #12, Santa Ana, Calif.

FOR THE FOLLOWING PROPERTY:

Marijuana and items commonly associated with storage and use of marijuana consisting of sifters, baggies, scales and other weighing devices. Also, articles of personal property tending to establish the identity of persons in control of the premises consisting of utility receipts, rent receipts and cancelled mail envelopes. Also, records of narcotics transactions, telephone records, notes of monies paid and owed, quantities of marijuana ordered by purchasers and money received through narcotics sales including the following U.S. currency:

Also to answer, listen, record, monitor, note, converse with callers who appear to be calling in regards to drug sales on the telephone or answering machine or device to return any calls left on any answering machine or device, or any telephone beeper

or pager located within the location, with revealing officers' identity.

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 30th day of October, 1987, at 12:40 p.m. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

/s/ Gary P. Ryan, NIGHT SERVICE

APPROVED: YES  NO

(Signature of Magistrate)

Judge of the Municipal Court, /s/  
Judicial District

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**STATEMENT OF PROBABLE CAUSE**

Your affiant says that the facts in support of the issuance of the Search Warrant are as follows: That your affiant is a sworn police officer and has been so employed for five (5) years.

That your affiant, while acting in said capacity, has received the following information: On 10-28-87, your affiant received a telephone call from D.E.A. Agent John McCarthy from Hawaii, phone number (808) 541-1936. He told your affiant he had seized a package containing a picnic cooler. This cooler contained nine clear bags of marijuana. These bags were approximately 12" x 4" x 3" each containing approximately two pounds of marijuana. McCarthy told your affiant this package was opened by him and he found the marijuana. The package was addressed to a J.R. Daza at 805 W. Stevens Avenue, Santa Ana, CA 92704 with a phone

number of (714) 641-3874. This package was to be sent to Federal Express at 700 E. Alton in Santa Ana. McCarthy told your affiant he would ship the marijuana to your affiant. Our intent was to arrest the person who picked up the marijuana.

On 10-29-87, your affiant received the package. Your affiant opened it and found it to contain the marijuana as McCarthy had told your affiant about. Your affiant repackaged the box and contacted Mike Cole the Senior Operations Manager at Federal Express. Your affiant told him your affiant wanted [sic] to leave the package and arrest the person who picked it up. He took the package and locked it in a room.

On 10-30-87, your affiant recontacted Mike Cole at the Federal Express. Your affiant examined the package containing the marijuana. It was still locked in the same room your affiant observed Cole lock

it in on 10-29-87. The package had not been tampered with. Your affiant recognized the wrapping as the same wrapping your affiant wrapped the package in on 10-29-87. I also placed a very small mark on the wrapping and this mark was still there.

The telephone number was checked through Department resources and the number of 641-3874 came back to a Jaime R. Daza at 807 W. Stevens, #12, Santa Ana. A check of Jaime Daza's CDL found an address of 807 W. Stevens, #12. At approximately 1030 hours a subject who identified himself as Jaime Daza went to the front counter of the Federal Express and picked up the package. The suspect was approximately 5'8", 140 lbs., short brown hair wearing a long sleeve brown and white striped shirt and white pants. Your affiant observed this subject place the package containing the marijuana into the

rear of a black Honda Civic, license number 1GIH260. This subject was surveilled by the Santa Ana Narcotics Detail and the Santa Ana Career Criminal Unit to 807 W. Stevens, #12. Inv. Cousin then observed this subject remove the package from the vehicle and walk into apartment #12.

Your affiant's expertise consists of the following: Your affiant has been a sworn police officer for the last five years. Your affiant has worked as a Narcotics Investigator for the past one and one-half years. Your affiant has approximately 140 hours of school and training in packaging, sales, transportation and recognition of narcotics. Your affiant has qualified as an expert in the use of both heroin and cocaine in Municipal and Superior Courts in Orange County. Your affiant has made over 200 arrests for the use and influence

of cocaine and heroin. Your affiant has over 500 hours of surveillance experience and has purchased narcotics in an undercover capacity 15 times. Your affiant has made over 100 marijuana related arrests.

It is your affiant's expert opinion that this subject John Doe is in possession of this marijuana for the purpose of selling it. The size of the packages of the marijuana along with the large quantity, approximately 15 to 20 pounds, is consistent with the amount possessed for sales.

It has been your affiant's training and experience during the service of search warrants that we will find articles of personal property tending to establish the identity of persons in control of the premises consisting of receipts, rent receipts, cancelled mail envelopes, records of narcotic transactions,

JA-19

telephone records, notes of money owed,  
quantities of heroin ordered by purchasers  
and names of purchasers, any telephone  
answering tapes or video cassette tapes.

/// approved: 10-30-87

/// /s/ David C. Velasquez DDA

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[Clerk's Transcript pp. 77]

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ORANGE

JUDGE: Leonard H. McBride

CLERK: Sharon Kupka

DATE 10-7-88

BAILIFF: Ray Lewis

REPORTER: Ron Gerratsen

TIME: 9 a.m. DEPT: 44

C-68857 People vs Acevedo, Charles Steven

(x) Hrg re: [ ] Trial [ ] Prob.

Violation [ ] Stay of Exec.

[x] 995 PC Motion [x] 1538.5 PC

Motion

[ ] Other:

---

(x) Deft in court with csl Fred Anderson

.....<sup>4/</sup>

(x) Peo rep by Michael Jacobs Dep. D.A.

.....

(x) Court read moving papers & opposition

& heard argument from counsel

People's P&A's modified by

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4. Dots indicate deletion of  
unused portions of trial court minute  
order forms.

interlineation. Counsel stipulated as to certain facts of the case.

Court finds the police had reasonable cause to detain & search vehicles without a search warrant.

(x) Motion by deft denied as to 995 PC & 1538.5 PC motions.

• • • • • • • • • •

(x) 10-12-88 TD to remain

• • • • • • • • • •

(x) Regarding the 995 PC Motion Court finds the police officer had sufficient knowledge of marijuana to determine that what he found on deft. was marijuana. Motion denied.

Ext. 10-7-88

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[Clerk's Transcript pp. 78-79]

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE  
MINUTE ORDER

Dept 5 convened at 9 a.m.

DATE 10-12-88

JUDGE: HONORABLE MYRON S. BROWN DEPUTY  
CLERK: F. Ray  
BAILIFF: G.S. Crandall  
REPORTER: Kathy D. Hoffman

CASE: C-68857 PEOPLE VS. Acevedo, Charles  
Steven

MATTER: Trial Chg of Plea P&S

(x) Deft. (x) In Court (x) With csl. Fred  
W. Anderson

(x) Peo. Rep. by Nat Glover D.D.A.

• • • • • • • • • •

(x) Deft. (x) Adv. of legal & const.  
rights.

(x) Deft. Wvd. Stat. Time for ( )  
arraignment ( ) trial (x) sent (x)  
prob. report. (x) Info ( ) Indict.

- (x) Amend by adding count 2 sec.  
11357(c) HS
- (x) Deft. wvd. reading, defects & advisement. (x) Amended information to be filed.  
• • • • • • • • • •
- (x) Court finds deft intell & voluntarily waived legal & const rights to jury trial, confront & examine witnesses and to remain silent.
- (x) Deft's written wvr. of legal and const. rts. on (x) Guilty  
( ) Nolo contender plea recv'd & ord filed. Court finds fact. basis & accepts plea. To (x) Amend ( ) Compl  
( ) Ind ( ) Info deft. pleads (x) Guilty ( ) Nolo contendere to (x) counts 1 and 21 [sic]  
• • • • • • • • • •
- (x) Deft adv (x) Conseq of plea if not a citizen (x) This constitutes a prior conviction (-) Falls within

parameters of Proposition 8 (x)

Maximum exposure 3 years (x) conseq

of violating: (x) Prob ( ) Parole

(x) Csl. joins in waivers and plea. \_\_\_\_\_

(x) Deft. ( ) Applied ( ) Wvd. prob. (x)

Req. imm. sent. ( ) Prob. rep

ordered.

• • • • • • • • • • •

(x) Defendant advised if there are no violations of law or probation for 1 year the Probation Department will be relieved of supervision the remaining two years

continued on page 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

MINUTE ORDER

CASE: C-68857 PEOPLE VS. Acevedo, Charles  
Steven PAGE 2

(x) No legal cause why judgment should  
not be pronounced and deft. having  
(x) pled (x) guilty ( ) nolo  
contendere to ( ) been found guilty  
of 11359 HS a (x) felony ( ) misd. as  
chgd. in ct. 1 and 11357(c) HS a ( )  
felony (x) misd. as chgd. in ct. 2.  
Deft. sent to state prison for ( )  
low ( ) Mid ( ) Upper term of \_\_\_\_\_  
years.

• • • • • • • • • • • • • • •

(x) Imp. of sent. susp. & Deft. placed on  
prob. for 3 years. Under following  
terms:

(x) Be confined in OCJ for 30 days  
(x) Credit for time served of 2 actual 1  
conduct, totaling 3 days.

(x) Court orders stay of execution until  
Friday 11-11-88 at 8 PM (see below)  
• • • • • • • • • • • • • •

(x) Pay restitution fine of \$100.00 ( )  
Purs 13976 GC ( ) Fine stayed then  
permanently stayed upon payment of  
restitution  
( ) Make full restitution in amount  
determined by \_\_\_\_ through probation  
office \_\_\_\_.  
• • • • • • • • • • • •

(x) Use no unauthorized drugs, narcotics  
or controlled substances, submit to  
drug or narcotic testing as directed  
by P.O. or police officer \_\_\_\_

(x) Submit your person, prop, including  
residence, premises, containers or  
vehicle under your control to search  
and seizure at any time of the day or  
night by any police or P.O. with or  
without a warrant and with or without

reasonable cause or reasonable suspicion.

- (x) Cooperate with P.O. in plan for . . .  
Psychiatric (x) Drug . . .
- (x) Register pursuant to ( ) 290 PC (x)  
11590 H&S ( ) \_\_\_\_
- (x) Seek training, schooling or employment and maintain residence and associations as approved by the probation department. ( ) \_\_\_\_
- (x) Not own, use or possess any type of dangerous or deadly weapon.
- (x) Obey all laws, orders, rules and regulations of the probation dept., court and jail. (x) Violate no law  
( ) \_\_\_\_  
. . . . .
- (x) Pay lab analysis of \$40.00 as dir by P.O.
- (x) Deft accepts terms, cond of probation. . .  
. . . . .

(x) This minute order constitutes (x)  
Probation order . . .

(x) Temporary commitment order forwarded to jail this date; remaining 27 days to be served by reporting to jail by 8 PM Friday to be released by 8 AM Monday commencing 11-11-88 and following that schedule until sentence has been served.

ENTERED: 10-12-88

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[Reporter's Transcript pp. 2-5]

Santa Ana, California - Friday,

October 7, 1988

Morning session

(The following proceedings were had  
in open court:)

THE COURT: People versus Richard  
Brian St. George and Charles Steven  
Acevedo.

MR. JACOBS: Mike Jacobs for the  
People.

MR. ANDERSON: Fred Anderson for Mr.  
Acevedo.

MR. LANDGREN: Todd Langren for Mr.  
St. George [the co-defendant], who is  
present.

THE COURT: I understand this is not  
going to be a de novo hearing, we're going  
to submit it on the basis of a  
stipulation, are we?

MR. JACOBS: Yes, Your Honor. I've  
submitted points and authorities and the

factual patterns are the same, but I have in front of me the motion on Richard Brian St. George, points and authorities --

THE COURT: Slow down. Who represents St. George?

MR. LANDGREN: I do, Your Honor.

THE COURT: His points and authorities, and we're going to assume --

MR. JACOBS: No, it's mine.

THE COURT: It's yours. I'll have to look at those carefully.

MR. JACOBS: Then there's one addition, Your Honor.

THE COURT: We're talking about what pages?

MR. JACOBS: Your Honor, the facts are on page 1 and 2. There's a correction on page 2, line 3, it should be apartment number 12.

THE COURT: Are we correcting that?

MR. JACOBS: From 3 to number 12.

THE COURT: I have 807 Stevens, #12.

MR. JACOBS: That's what it should read.

THE COURT: That's what mine reads.

MR. JACOBS: All right. Then at the end of the paragraph we're going to add one sentence. That sentence would be, "At 11:45 a.m. surveilling officers saw Mr. Daza exit the residence and dropped the paper and box which had contained the cooler holding the marijuana into a trash bin."

THE COURT: Okay.

MR. JACOBS: One more sentence, Your Honor: "At that time Officer Coleman left the scene to obtain a search warrant."

THE COURT: I've written those two sentences into the presentation of facts as contained in your brief.

MR. LANDGREN: There should be some additional changes I'd like to go over with the court, with Mr. Jacobs' approval.

On line 11 of that second page of the statement of facts there's a conclusionary statement. If I may have just a moment with counsel I won't clutter up the record.

Your Honor, one [sic] line 13, the second page after the word "Morehouse," we should insert the words -- it says "stopped and detained by Officer Morehouse."

THE COURT: That's line 12 on mine.

MR. LANDGREN: Okay, I'm sorry.

After "Morehouse," it should be after he went to the complex should be substituted for the words "as he attempted to drive out of the complex."

THE COURT: That's what mine says.

MR. LANDGREN: Your's says, "as he attempted to drive out of the complex."

THE COURT: Yes. "Then stopped and detained by Officer Morehouse as he attempted to drive out of the complex."

MR. LANDGREN: The words "as he attempted to drive out of the complex" should be changed and it should read, "after he drove --" or "after he left the complex."

THE COURT: "After he left the complex"?

MR. LANDGREN: Yes, sir.

THE COURT: Okay. Anything else?

MR. LANDGREN: No, sir.

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[Reporter's Transcript pp. 9-10]

THE COURT: I'm having a little trouble determining exactly what the facts are from this statement. Let's clarify what we have so we're predicating our decision on the stipulation.

We're talking about at page 2 defendant St. George was observed by Officer Andrade and Cousins exiting the residence wearing a blue knapsack. Doesn't say how they got into the knapsack. Just says he was arrested after the officers found --

MR. JACOBS: The last sentence says after he was taken into custody they searched the knapsack.

THE COURT: Said he was arrested after the officers found approximately one and a half pounds of marijuana in the knapsack. So apparently by implication there was a search of the knapsack and then an arrest. Doesn't say that here.

Is that what happened?

MR. JACOBS: Yes, we'd stipulate  
that's what happened.

THE COURT: Do you stipulate to that,  
Mr. Anderson?

MR. ANDERSON: Yes. When it doesn't  
affect my case I'll stipulate to anything.

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[Reporter's Transcript pp. 19-20]

[MR. LANDGREN:] The court has before it attached to the points and authorities, I believe the court has the search warrant. Did we include that in our motion?

MR. JACOBS: Yes.

MR. LANDGREN: If the court would take note of the motion.

THE COURT: That includes the affidavit for everything in the search warrant?

MR. LANDGREN: Yes, sir.

THE COURT: Mr. Anderson, are you stipulating that can be considered by the court as as factual presentation?

MR. ANDERSON: May I have just a moment, Your Honor?

Yes, I'll stipulate to that.

THE COURT: All right.

MR. JACOBS: That's fine, Your Honor.

THE COURT: Okay.

[Reporter's Transcript pp. 22-23]

MR. ANDERSON: May I insert a couple items in the statement of facts?

THE COURT: If you want to, but I wish we'd get all this together.

MR. ANDERSON: I understand, Your Honor. At line 19 --

THE COURT: Page 2?

MR. ANDERSON: On page 2 where it says "silver Honda," but not the same Honda as the search warrant. The search warrant Honda is a black Honda. This is a silver Honda.

THE COURT: Mr. Jacobs said they can detain these people if they have probable cause to detain them, and then if they learn something during the course of the search they can amplify the request for the warrant and search these people because of the information they received in the house. That would mean that it doesn't have to be named in the search

warrant on his doctrine of inevitable discovery. The question is, does the doctrine go that far? He said yes, it does. And neither one of you have responded to that.

MR. ANDERSON: Can I finish amending the facts?

THE COURT: Sure. You don't have to amend them, just stipulate that silver Honda here was not named in the search warrant.

MR. JACOBS: Why don't we stipulate the trunk was locked.

MR. ANDERSON: The trunk was locked and when they affected the stop my client's car was driving down a public street having left the area.

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[Reporter's Transcript pp. 25-26]

THE COURT: Everybody is all through?

We don't have innocent behavior to start with. We have illegal behavior to start with. We have marijuana, which is a bulks [sic] substance, we have a delivery to a house, which must be the house wherein illegal activity takes place and distribution therefrom must take place or reasonably could take place. We have two people leaving the house with things convenient for the purpose of carrying marijuana, and certainly the police had reasonable and probable cause to detain them. Then we have the car situation, which gives rise to search greater leeway when it's involving a car, and the stipulated facts include the fact that both these cars were in motion when they were stopped.

You could say well, the police let them get in motion so they could stop them

and use the broader spectrum that's involved with a car than it would if they were just walking down the street. And I don't know of any case that says they can't do that. It's like the old cases where they used to wait until the guy went in his house and arrest them in there so they could search the house. That was ruled out in Chimel, I don't know of any case that applies to cars. So they're in a car, they have reasonable cause to believe there's narcotics in the car, they stop it. You've got a car stop. And you have exigent circumstances under the cases. And I think they had reasonable cause under the cases, which you don't necessarily agree with, to search the cars without a search warrant, which they did, and obtained the narcotics.

I don't agree with Mr. Jacobs that inevitable discovery would apply in this case. But irrespective of that, I feel

they could have got a search warrant. But I don't think they had one and to search these two items, but I do find that the car stop search was legal and your motion under 1538 is denied.

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AFFIDAVIT OF SERVICE BY MAIL

Attorney:

No: 89-1690  
October Term, 1990

JOHN K. VAN DE KAMP  
Attorney General of  
the State of California

Deputy Attorney General

110 West A Street, Suite 700  
San Diego, California 92101  
v.  
CHARLES STEVEN ACEVEDO

Petitioner,  
Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within JOINT APPENDIX as follows: To Joseph F. Spaniol, Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, D.C. 20543, an original and 40 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing one copy in a separate envelope addressed for and to each addressee named as follows:

Pred Anderson  
1051 East 1st Street,  
Suite 1450  
Santa Ana, CA 92705  
Office of the Clerk  
Supreme Court of California  
4250 State Building  
San Francisco, CA 94102

Clerk of the Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701  
District Attorney of  
Orange County  
P.O. Box 808  
Santa Ana, CA 92701

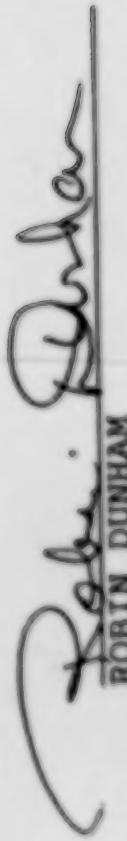
Court of Appeal  
Court Appellate District  
Division Three  
925 No. Spurgeon  
Santa Ana, CA 92702

Each envelope was then sealed and with the postage prepaid deposited in the United States mail by me at San Diego, California, on the 8th day of November, 1990.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, November 8, 1990.

  
ROBIN DUNHAM

Subscribed and sworn to before me  
this 8th day of November, 1990.

  
Anne M. Burch  
Notary Public—California  
County of San Diego  
My Commission Expires 11/19/91

